

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

MICHAEL L. ODOM,	:	CIVIL ACTION NO. 1:13-CV-1594
	:	
Plaintiff	:	(Chief Judge Conner)
	:	
v.	:	
	:	
GREGORY MOREHEAD, et al.,	:	
	:	
Defendants	:	

ORDER

AND NOW, this 18th day of August, 2014, upon consideration of the report (Doc. 20) of Magistrate Judge Susan E. Schwab, recommending the court grant the motion (Doc. 15) to dismiss by defendant Gregory Morehead (“Morehead”) seeking partial dismissal of the complaint (Doc. 1) filed by *pro se* plaintiff Michael L. Odom (“Odom”), and further recommending the court dismiss the remainder of Odom’s complaint (Doc. 1) for failure to prosecute pursuant to Federal Rule of Civil Procedure 41, see FED. R. CIV. P. 41(b) (permitting court to dismiss lawsuit if the “plaintiff fails to prosecute or to comply with these rules or a court order”), and failure to oppose the motion, see LOCAL RULE OF COURT 7.6 (“Any party who fails [to timely file a brief in opposition] shall be deemed not to oppose such motion.”), and, after an independent review of the record, the court being in agreement with the magistrate judge that the *pro se* plaintiff has abandoned this case, and it further appearing that Odom did not object to Judge Schwab’s report, and that there is no clear error on the face of the

record,¹ see Nara v. Frank, 488 F.3d 187, 194 (3d Cir. 2007) (noting that “failing to timely object to [a report and recommendation] in a civil proceeding may result in forfeiture of *de novo* review at the district court level”), and the court cognizant that leave to amend must be liberally granted unless amendment would be inequitable, futile, or cause undue delay, see Grayson v. Mayview State Hosp., 293 F.3d 103, 114 (3d Cir. 2002), but concluding that dismissal of Odom’s complaint (Doc. 1) should be with prejudice because Odom has already been granted leave to file an amended complaint curing certain deficiencies identified by the Magistrate Judge in her initial report and recommendation, (see Docs. 7, 9), but failed to do so, and further because Odom has been silent in the wake of two (2) court orders (Docs. 17, 19) directing him to respond to the pending motion, it is hereby ORDERED that:

¹ When parties fail to file timely objections to a magistrate judge’s report and recommendation, the Federal Magistrates Act does not require a district court to review the report before accepting it. Thomas v. Arn, 474 U.S. 140, 149 (1985). As a matter of good practice, however, the Third Circuit expects courts to “afford some level of review to dispositive legal issues raised by the report.” Henderson v. Carlson, 812 F.2d 874, 878 (3d Cir. 1987). The advisory committee notes to Rule 72(b) of the Federal Rules of Civil Procedure indicate that “[w]hen no timely objection is filed, the court need only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.” FED. R. CIV. P. 72(b), advisory committee notes; see also Henderson, 812 F.2d at 878-79 (stating that “the failure of a party to object to a magistrate’s legal conclusions may result in the loss of the right to *de novo* review in the district court”); Tice v. Wilson, 425 F. Supp. 2d 676, 680 (W.D. Pa. 2006) (holding that the court’s review is conducted under the “plain error” standard); Oldrati v. Apfel, 33 F. Supp. 2d 397, 399 (E.D. Pa. 1998) (holding that the court will review the report and recommendation for “clear error”). The court reviews the magistrate judge’s report and recommendation in accordance with this Third Circuit directive.

1. The report (Doc. 20) of Magistrate Judge Schwab is ADOPTED in its entirety.
2. The unopposed motion (Doc. 15) to dismiss filed by defendant Gregory Morehead is GRANTED. See LOCAL RULE OF COURT 7.6.
3. The complaint (Doc. 1) filed by plaintiff Michael L. Odom is DISMISSED with prejudice for failure to prosecute. See FED. R. CIV. P. 41(b).
4. The Clerk of Court is directed to CLOSE this case.

/S/ CHRISTOPHER C. CONNER
Christopher C. Conner, Chief Judge
United States District Court
Middle District of Pennsylvania